IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 21ST AUGUST 2007 / 30TH SRAVANA 1929

Bail Appl..No. 5091 of 2007()

CRIME NO.192/2007 OF PARIPALLY POLICE STATION

PETITIONERS/ACCUSED 1, 3 & 4

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1. SHIJU, S/O.VISWAMBARAN, EZHIPURAM, KOLLAM DISTRICT.

2. SHIBU, EZHIPURAM, KOLLAM DISTRICT.

3. DEEPU, S/O.MOHANAN, EZHIPURAM, KOLLAM DISTRICT.

BY ADV. SRI.LATHEESH SEBASTIAN

RESPONDENTS: STATE

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1. STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

2. SUB INSPECTOR OF POLICE, PARIPALLY POLICE STATION.

BY PUBLIC PROSECUTOR ADV.SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 21/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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B.A.No.5091 of 2007

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Dated this the 21st day of August, 2007

ORDER

Application for anticipatory bail. Petitioners are accused 1,3 and 4. The 2nd accused has already been arrested and enlarged on bail. The petitioners along with the co-accused face allegations, inter alia, under Section 308 read with 34 IPC. On account of prior animosity which arose in respect of transaction of a motor cycle, the accused persons allegedly armed with dangerous weapons-sword, stick etc attacked the defacto complainant and caused injury to him. Injury suffered is 2x8 cm injury allegedly inflicted with the sword on the face of the defacto complainant. Investigation is in progress. The petitioners apprehend imminent arrest. The learned counsel for the petitioners submits that the the petitioners are absolutely innocent. The defacto complainant is an influential person. That is why allegation under Sec.308 has been included. There is no justification for including that section of offence. Such allegation is raised with the sole intention to ensure that the accused persons continue in custody. Anticipatory bail may in these circumstances be granted to the petitioners, prays the learned counsel for the petitioners.

2. The learned Public Prosecutor opposes the application. The

learned Public Prosecutor submits that the nature of injury suffered as well as the nature of the weapon must clearly suggest to the Court the intention of the accused persons. The fact that all the accused did not wield weapons may not clinch the issue at this stage, submits the learned Public Prosecutor. There is absolutely no circumstance justifying invocation of the extraordinary equitable discretion under Section 438, submits the learned Public Prosecutor.

3. I find merit in the opposition by the learned Public Prosecutor. There are no features in this case suggesting the need for invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. This is a fit case where the petitioner must appear before the learned Magistrate and seek regular bail in the ordinary and normal course.

4. In the result, this petition is dismissed. I may however, hasten to observe that if the petitioners appear before the Investigating Officer or the learned Magistrate and apply for bail, after giving sufficient prior notice to the Prosecutor, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

sj